

APPEAL NO. 041617  
FILED AUGUST 23, 2004

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 30, 2004. The hearing officer determined that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter and that the respondent (carrier) waived the right to contest the claimant's entitlement to SIBs by failing to timely request a benefit review conference (BRC). In Texas Workers' Compensation Commission Appeal No. 040952, decided June 7, 2004, the Appeals Panel reversed the hearing officer's determination that the carrier waived the right to contest SIBs entitlement and remanded the case in order for the hearing officer to make findings of fact explaining how the claimant satisfied the requirement for SIBs entitlement during the period from August 30 through October 10, 2003. On remand, the hearing officer issued essentially the same decision as he had previously, with one additional finding of fact. The carrier appeals the hearing officer's decision, pointing out that although the waiver determination had been rendered, the decision and order continued to reflect that the carrier waived the right to contest SIBs entitlement. Additionally, the carrier asserts that the claimant is not entitled to fourth quarter SIBs. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

**WAIVER OF RIGHT TO CONTEST SIBs ENTITLEMENT**

As the carrier correctly points out, the waiver issue was resolved in Appeal No. 040952, *supra*, wherein we rendered a new decision that the carrier did not waive the right to contest the claimant's entitlement to fourth quarter SIBs because it timely requested a BRC. Therefore, the findings of facts and conclusion of law in the Decision on Remand with regard to the waiver issue that are contrary to our decision in Appeal No. 040952 are incorrect and should be disregarded.

**SIBs ENTITLEMENT**

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. A claimant can satisfy the good faith requirement by demonstrating that she had no ability to work for part of the qualifying period and by conducting a good faith job search in the other part of the qualifying period, but in order to prevail, the claimant must produce evidence that establishes the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) for the period of time that no ability

to work was asserted and evidence that meets the criteria of Rule 130.102(e) for the period of time wherein a good faith job search was claimed. Texas Workers' Compensation Commission Appeal No. 002428, decided December 1, 2000. The claimant asserted a hybrid theory of recovery at the hearing; that she had no ability to work from August 30 through October 10, 2003, and that she satisfied the requirements of Rule 130.102(e) for the remainder of the qualifying period.

We remanded the case because in determining that the claimant was entitled to SIBs, the hearing officer failed to address and make findings explaining how the claimant satisfied the good faith requirement of 408.142 for the first six weeks of the qualifying period. In the Decision on Remand, the hearing officer found that from August 30 through October 10, 2003, the claimant established that she had no ability to work. Under the facts of this case, we perceive no error in the hearing officer's no-ability-to-work finding. See Texas Workers' Compensation Commission Appeal No. 961771, decided October 24, 1996. Nothing in our review of the record indicates that the hearing officer's decision that the claimant is entitled to SIBs for the fourth quarter is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Edward Vilano  
Appeals Judge